

**IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

ELLA JANE McCRAY,

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PLAINTIFF,

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VS.

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CASE NO: 2:06-CV-309-MHT

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CITY OF EUFAULA, ALABAMA,

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STEVE HANNERS, and DAVID

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DEBOSE,

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DEFENDANTS.

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PLAINTIFF'S OBJECTION TO DEFENDANTS' MOTION TO STRIKE
PLAINTIFF'S SECOND AMENDED COMPLAINT

COMES NOW the Plaintiff, ELLA JANE McCRAY, by and through her undersigned attorney, Benjamin E. Meredith, and objects to Defendants' Motion to Strike Plaintiff's Second Amended Complaint and as reasons for same states as follows:

1. Federal Rule of Civil Procedure 15(a) states: "A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served..."
2. On April 26, 2006, this Honorable Court ordered that the Plaintiff amend her complaint to correct certain deficiencies.
3. On May 19, 2006, the Plaintiff filed her Amended Complaint pursuant to the Honorable Court's order of April 26, 2006.
4. On May 22, 2006, Defendants filed a Motion to Strike Plaintiff's Amended Complaint.
5. On June 9, 2006, Defendants file another Motion to Strike alleging that the Plaintiff did not seek leave of the court to do so.

6. According to Rule 15(a), a party may amend their pleading once, without leave of court, if it is filed before receipt of a responsive pleading. In the case at hand, the Defendants have never filed a responsive pleading. Instead, the Defendants have spent the last two (2) months filing motions to dismiss and motions to strike which are not considered responsive pleadings. Washington v. New York City Board of Estimate, 709 F.2d 792, 795 (2d Cir.1983).

WHEREFORE, PREMISES CONSIDERED, the Plaintiff respectfully requests that the Honorable Court deny the Defendants' motion to strike Plaintiff's second amended complaint or in the alternative grant the Plaintiff leave to amend and allow this matter to proceed on the merits.

RESPECTFULLY SUBMITTED this the 19th day of June, 2006.

/s/Benjamin E. Meredith
Benjamin E. Meredith(MER015)
Attorney for Plaintiff
707 West Main Street
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(334) 671-0289

CERTIFICATE OF SERVICE

I, Benjamin E. Meredith, certify that on June 19, 2006, I electronically served a copy of this document upon:

James H. Pike
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